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Review of implementation of the United Nations Convention against Corruption

Executive summary

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II. Executive summary

Slovenia

1. Introduction: Overview of the legal and institutional framework of Slovenia in the context of implementation of the United Nations Convention against Corruption

The National Assembly of Slovenia ratified the United Nations Convention against Corruption on 6 February 2008, and the President signed it on 14 February 2008. Slovenia deposited its instrument of ratification on 1 April 2008.

According to article 8 of the Constitution, the Convention forms an integral part of Slovenia's domestic law, ranking below the Constitution but above other laws, and is therefore applicable directly as far as it obliges States to take concrete measures.

With regard to the criminal procedure, the police investigates upon a complaint or ex officio and refers the case to the State prosecutor. The State prosecutor submits a direct accusation or, when required, requests that a judicial investigation be conducted by an investigative judge. In the trial phase, the hearing is public and ends with the pronouncement of the judgement, against which there is the right to appeal.

The most important institutions in the fight against corruption are the Commission for the Prevention of Corruption (hereinafter: the Commission), the State Prosecutor's office (comprising the Specialized State Prosecutor's Office for, inter alia, corruption and organized crime), the police (comprising the National Bureau of Investigation, a specialized criminal investigation unit for complex crime, including corruption) and the Financial Investigation Unit.

Article 99 of the Criminal Code (CC) contains a detailed definition of the term "public official", covering a wide range of officials performing official duties with management responsibilities, but not persons in public enterprises. Although the law seems to be interpreted in a way that persons without managerial responsibilities are also considered public officials, the law is not explicit in this regard. Foreign public officials and officials of public international organizations are covered under the concept of public officials (art. 99 CC).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

National and transnational bribery are regulated in article 261 CC (passive) and article 262 CC (active). The indirect commission of the act is not explicitly covered, but is considered implicitly covered, supported by the fact that indirect bribery is criminalized in the person of the intermediary. Although indirect bribery could be possibly covered by instigation, it was noted that instigation is a very specific concept and possibly limited in application. Transnational bribery is covered under the same provisions because foreign public officials and officials of public international organizations are covered under the concept of public officials (art. 99 CC).

Trading in influence is regulated in article 263 CC (passive) and article 264 CC (active), which cover most elements except for the indirect commission of the act. Article 263 CC, further, does not cover the "soliciting" of an undue advantage.

Bribery in the private sector is criminalized in article 241 CC (passive) and article 242 CC (active bribery). The provision covers most of the elements but is limited to making or retaining a contract or other benefit. Further, the indirect commission is not covered.

Money-laundering, concealment (arts. 23 and 24)

Slovenia has criminalized money-laundering in article 245 CC.

The term "exchange" in article 245, paragraph 1, covers the concept of "conversion" in the Convention; further, the "acquisition" is covered by the verb "accept" and the "possession" by the verb "store".

The "transfer" and the "concealment and disguise" of the "true nature, ... location, disposition, movement or ownership of or rights with respect to property" are not covered.

The "use" is covered in cases in which it refers to an economic activity or any other manner defined in article 2 of the Act, governing the prevention of money-laundering, which contains a general definition of money-laundering.

Slovenia has criminalized all mentioned forms of participation in money-laundering except conspiracy to commit money-laundering.

Slovenia has adopted an all-crime approach, covering all offences committed both inside and outside the Slovenian jurisdiction. Money-laundering is an independent offence, and charges may be brought for self-laundering.

Concealment is criminalized in article 217 CC.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is regulated in article 209 CC, which does not state that the appropriation could be for the benefit of a public official or a third person.

Abuse of functions is regulated in article 257 CC.

Slovenia has not criminalized illicit enrichment. Slovenia has an asset declaration system and has established the legal consequences of the violation of financial disclosure obligations.

Embezzlement in the private sector is covered by a general provision on diversion of property (art. 209, para. 1).

Obstruction of justice (art. 25)

In article 286 CC, Slovenia has implemented most of the elements of article 25 of the Convention; only the "promise" of an undue advantage in the context of article 25 (a) is not covered.

Liability of legal persons (art. 26)

Slovenia has a comprehensive system of criminal, civil and administrative liability of legal persons. Criminal liability is established in article 42 CC, independently of the criminal liability of natural persons involved. A broad range of sanctions are foreseen in the Liability of Legal Persons for Criminal Offences Act. Slovenia has brought accusations against legal persons for corruption offences in a number of cases.

Slovenia's legal framework also provides for limited administrative liability in public procurement cases in article 14 of the Integrity and Corruption Prevention Act. Blacklisting of companies is regulated in article 77 a) of the Public Procurement Act, article 81 a) of the Act Regulating Public Procurement in Water, Energy, Transport and Postal Services and article 73 of the Public Procurement for Defence and Security Act. Civil liability of legal persons for damages inflicted through criminal offences is regulated in articles 353-354 of the Obligations Code.

Participation and attempt (art. 27)

Slovenia regulates participation and attempt in articles 36.a-41 and 34-36 CC.

Slovenia has criminalized the preparation of fraud but not of other offences.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

All corruption offences in Slovenia carry sanctions of deprivation of liberty, whose upper limits vary between 1 and 10 years and lower limits between 30 days and one year. In the Criminal Code there are sentencing provisions ensuring that the gravity of the offence is taken into account. Case practice shows that serious sanctions are enforced in corruption cases.

Functional immunity exists for deputies of the National Assembly (art. 83 Constitution) and the National Council (art. 100 Constitution), as well as for judges in the context of their judicial decisions (art. 134 Constitution). It can be waived by the National Assembly. Such functional immunity does not exclude the initiation of pretrial proceedings, only the accusation.

Generally, prosecution in Slovenia is mandatory; however, articles 161, 161 (a) and 162 of the Criminal Procedure Act (CPA) provide exceptional discretionary powers for prosecutors to decide to not prosecute in *de minimis* cases, in offences with sanctions up to three years, (which covers some corruption offences) in which a settlement can be negotiated, and in cases of active regret by the accused (art. 162). Further, plea bargaining is foreseen within certain limits. It was noted that in corruption cases normally the rule of mandatory prosecution is applied.

Articles 192-201 CPA regulate provisional detention and other measures to ensure the presence of the accused at criminal proceedings. It was noted that generally the mildest measure is imposed, taking into account the necessity to ensure the presence of the accused.

Early release or parole is regulated in article 88 CC.

Prosecutors and judges can be suspended after a criminal accusation (art. 93-94, art. 95-98 Judicial Service Act), while no such provisions exist for other public officials, nor for removal and reassignment of public officials.

As an accessary sanction, Slovenia can ban a convicted person from the performance of his/her profession (arts. 69-71 CC). Article 154 of the Civil Servants Act foresees that the contract of employment of a civil servant may be terminated if the civil servant is lawfully convicted of an offence.

Slovenia has a disciplinary system for each sector; criminal and disciplinary responsibility are independent.

A rehabilitation system for convicted offenders has been established, pursuant to chapter IX of the Criminal Code, which covers Convention against Corruption offences.

Slovenia has adopted provisions about agreements between the accused and the public prosecutor on cooperation with the justice system (chap. XXV a CPA), and about guilty pleas (art. 51, para. 2 CC). Further, Slovenia has a provision about the "remission", i.e., abolishment or reduction of the punishment of an offender who spontaneously confesses the commission of the offence (art. 52 CC), and a relevant provision in the context of the opportunity principle (art. 163 CPA). For bribery, there is a provision on effective regret (art. 262, para. 3, CC). The Witness Protection Act covers those who cooperate with law enforcement authorities. Slovenia has not entered into any agreements or arrangements with other States parties on substantial cooperation with law enforcement at the international level.

Protection of witnesses and reporting persons (arts. 32 and 33)

Slovenia has relevant provisions in the CPA (arts. 141 a, 240 a, 244 a) and the Witness Protection Act, and has a witness protection programme since 2007. Measures include physical protection and relocation as well as evidentiary rules that allow for protection of the identity of protected persons. Victims are eligible for protection insofar as they are witnesses. However, Slovenian authorities highlighted that during the investigation of corruption offences, the problem of witnesses not testifying because of safety concerns was a major problem. Further, experts are not eligible for protection under either the CPA or the Witness Protection Act.

The international exchange of personal data and relocation of persons is foreseen in the Witness Protection Act, and Slovenia is the depository of an agreement on cooperation in the area of witness protection between eight Eastern European States and Austria.

Victims can assume different roles under Slovenian criminal procedure, i.e., as witnesses, injured parties, subsidiary prosecutors or private prosecutors, thus allowing the views and concerns of victims to be presented and considered during criminal proceedings.

Whistle-blower protection is regulated in the Integrity and Corruption Prevention Act, which establishes the protection of the identity of reporting persons, the burden of proof on the employer and the right of the employee to claim compensation for reprimands resulting from the reporting of offences, both in the private and public sectors. Provisions against mobbing in the Labor Act are also applicable.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Slovenia has regulated both conviction-based and non-conviction-based confiscation of proceeds of crime, referring to all criminal offences.

The conviction-based system is regulated in articles 74-77c CC and articles 498-503 CPA. Although articles 498-501, 503 CPA generally regulate a conviction-based system, they also provide for certain exceptional cases in which property can be confiscated in the absence of a conviction, mostly for preventive reasons. The Slovenian confiscation system is a value-based system (art. 75 CC). The object, or a link between the offence and the object, do not have to be found or proven. The value is determined in the proceedings by general evidentiary rules. Moreover, extended confiscation is regulated in article 77 a-c for proceeds of organized crime.

The non-conviction-based forfeiture system is a civil procedure regulated in the Forfeiture of Assets of Illegal Origin Act (ZOPNI), which applies to a number, but not all corruption offences. Given the recent adoption of the law, no cases have been brought yet under its regulations.

Slovenia has also adopted provisions on the conviction-based confiscation of instrumentalities used and destined for use in offences in article 73 CC, while non-conviction-based confiscation only refers to proceeds of crime.

Seizure and freezing are regulated in articles 502-502e CPA and articles 20-21 ZOPNI. They generally require court decisions and are subject to a strict and, given the complexity of corruption proceedings, rather limited maximum duration of three months in the pretrial procedure and six months in trial procedure. The measures may be extended, but not to longer than one year or two years respectively.

Basic rules for the management of seized and confiscated assets are contained in article 506 a) of the CPA. Articles 37-41 ZOPNI also contain relevant regulations. Both include the pre-sale of assets before a final confiscation. Slovenia does not have a central institution to manage seized and confiscated assets, but the Court decides according to the nature of the assets. Slovenia has not yet had experience with the management of complex assets such as companies.

The seizure and confiscation of transformed and converted proceeds of crime, including the confiscation up to the value of proceeds intermingled with property from legitimate sources, are possible in both the conviction-based system due to its value-based nature (art. 75, para. 1 CC), as in the non-conviction-based system (art. 5, para. 1, ZOPNI). The seizure, freezing and confiscation of income and other benefits derived from such proceeds of crime are not explicitly regulated.

When banks do not cooperate in the lifting of bank secrecy (see below), files can be seized.

Slovenia has regulations on a shift of the burden of proof to demonstrate the lawful origin of proceeds or property liable to confiscation in the ZOPNI. The defendant has to prove the lawful origin of assets, or may face the legal consequence of (non-conviction-based) confiscation when lawful origin cannot be established. Further, in non-conviction-based and under some circumstances also in conviction-based confiscation procedures, third parties have to demonstrate that they did not receive the asset gratuitously.

Both the Criminal Code (art. 75) and the ZOPNI (art. 30) provide for the protection of bona fide third parties. Their property may only be confiscated if it was transferred for free or a sum lower than its actual value.

Lifting of bank secrecy generally requires an order of the investigating judge upon request of the public prosecutor (art. 156, para. 1, CPA and art. 8 ZOPNI). The Commission and, in crimes for which the perpetrator is prosecuted ex officio, the police can request banking information without a judicial order (art. 156, para. 5, CPA).

Statute of limitations; criminal record (arts. 29 and 41)

Articles 90-95 CC establish a statute of limitations that varies from 6 to 20 years depending on the gravity of the offences. The statute of limitation can be suspended as long as the alleged offender is evading the administration of justice.

Slovenia can take into consideration previous convictions regardless of where the person was convicted, and the Ministry of Justice holds relevant information in a database.

Jurisdiction (art. 42)

The jurisdiction over offences committed in the territory of Slovenia and on a domestic vessel or aircraft is regulated in article 10 CC.

Slovenia has also established its jurisdiction over a broad set of offences committed by its citizens abroad as well as by foreigners against its citizens (arts. 12-13 CC).

Moreover, Slovenia has established universal jurisdiction for some offences; however, not for corruption offences. Slovenia has not established its jurisdiction over corruption offences when the offence is committed against the State, and when it does not extradite the alleged offender on the ground of nationality or for other reasons.

Consultations for the coordination of actions in cases with multiple jurisdictions are not explicitly regulated, but can be carried according to article 160 b) CPA.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Article 14 of the Integrity and Corruption Prevention Act states that acts of public procurement which cause damage to a public sector entity or by which anybody obtains an undue advantage shall be deemed null and void. The provision can be interpreted to the effect that corruption can be considered a relevant factor in legal proceedings to annul such contracts, although no case examples have been provided.

The Code of Obligations contains articles 100-103 and 353 on compensation for damages caused by criminal offences, and article 354 by corruption specifically.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Slovenia has a specialized anti-corruption unit in the General Police Directorate and anti-corruption units at the regional level.

The National Bureau of Investigation is a specialized criminal investigation unit at the national level for serious crime, including corruption.

The Specialized State Prosecutor's Office has 10 specialized and 11 delegated anti-corruption prosecutors. The Commission is an independent body investigating corruption administratively and often submits its administrative cases to the Prosecutor's Office. These bodies enjoy an appropriate level of independence, resources and training.

The possibility to share information between the Commission and law enforcement authorities is regulated by law and Slovenian authorities confirmed that there are close working relationships between the Commission, the police (specialized anti-corruption unit) and the specialized anti-corruption prosecutors.

Slovenia has not yet taken measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector on corruption.

To encourage the reporting of corruption offences, the Commission and the police accept anonymous and online reports. The Commission provides information about whistle-blower protection on its website and carries out numerous trainings for civil servants on whistle-blower protection.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are to be highlighted:

- The existing system of immunities seems to strike an appropriate balance between immunities accorded to public officials for the performance of their functions and the possibility of effectively investigating, prosecuting and adjudicating corruption offences, and Slovenia has provided a number of examples indicating that procedures on waiving immunity of deputies of the National Assembly are a frequent practice (art. 30, para. 2).
- Statistics about confiscated assets have been provided, and a new programme will be in place in order to track the amount of confiscated assets in statistics disaggregated by offence (art. 31, para. 1).
- Slovenia has both a conviction-based and non-conviction-based confiscation system for final deprivation of assets that are proceeds and instrumentalities of crime, and related precautionary measures for both systems. It has therefore established a great extent of flexibility for the seizure, freezing and confiscation of proceeds of crime (art. 31, paras. 1 and 2).
- The Commission holds regular meetings with the law enforcement authorities and is allowed to share and receive information with and from them (art. 38).
- Access to banking information is granted to the Commission and the Police, additionally to the prosecutor by judicial order. The police can request bank information when there are grounds for suspicion that a crime for which the perpetrator is prosecuted ex officio was committed or is planned, and direct access is provided through the Agency of the Republic of Slovenia for Public Legal Records and Related Services, which holds a central registry of transaction accounts (art. 40).

2.3. Challenges in implementation

Noting the advanced anti-corruption legal system of Slovenia, it was recommended that Slovenia:

- Review its definition of a public official to align it with article 2 (a) of the Convention, in particular with regard to persons providing services in public agencies or enterprises and consider clarifying that persons without managerial responsibilities are also considered public officials (general part).
- Adapt the legislation on embezzlement to cover third-party beneficiaries (art. 17).
- Recognizing that indirect trading in influence and bribery in the private sector could potentially be covered by the provisions on instigation, ensure that the legislation be applied in this sense. Should case law evolve in a different direction, this could imply legislative clarification (arts. 18, 21).
- Consider amending the legislation on passive trading in influence to cover the solicitation of an undue advantage (art. 18, para. (b)).
- Consider establishing illicit enrichment as a criminal offence (art. 20).
- Consider broadening the offence of bribery in the private sector to cover also conduct not related to concluding or retaining a contract or other benefit (art. 21).
- Amend 245 CC to cover the "transfer", and the "concealment and disguise" of the "true nature, ... location, disposition, movement or ownership of or rights with respect to property" (art. 23, para. 1 (a)); criminalize conspiracy to money-laundering, subject to the concepts of the Slovenian legal system (art. 23, para. 1 (b) (ii)).
- Include in the legislation the "promise" of an undue advantage in all forms of obstruction of justice covered by article 25, subparagraph (a).
- Introduce broader measures on the administrative liability of legal persons for corruption (art. 26, paras. 1 and 2).
- Slovenia could criminalize the preparation for a corruption offence (art. 27, para. 3).
- Consider taking measures to allow for the suspension of public officials, similar to those already existing for judges and prosecutors, when they are being accused of an offence established in accordance with the Convention, as well as their removal and reassignment (art. 30, para. 6).
- Given the complexity of corruption procedures, extend the strict time limits for seizure and freezing orders (art. 31, para. 2).
- Review the system for the management of assets, with a view to ensuring that complex assets, such as e.g. corporate assets can be effectively managed over time (art. 31, para. 3).
- Explicitly regulate the seizure, freezing and confiscation of income and other benefits derived from proceeds of crime, from property into which such

proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled (art. 31, para. 6).

- Further strengthen witness protection, and include experts into the protection measures of the CPA and the Witness Protection Act (art. 32, paras. 1 and 2).
- Consider creating provisions allowing for corruption to be a relevant factor in legal proceedings to withdraw concessions or similar instruments (art. 34).
- Consider entering in agreements or arrangements with other States parties on substantial cooperation with the competent authorities of another State Party (art. 37, para. 5).
- Take measures to encourage cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to corruption matters (art. 39, para. 1).
- Establish jurisdiction over corruption offences when the alleged offender is present in its territory and it does not extradite such person on the ground of nationality (art. 42, para. 3).
- Slovenia could further establish its jurisdiction over offences committed by a stateless person who has his or her habitual residence in Slovenia (art. 42, para. 2 (b)), all forms of participation in money-laundering offences outside the country (art. 42, para. 2 (c)), offences committed against the Republic of Slovenia (art. 42, para. 2 (d)); and over corruption offences when the alleged offender is present in its territory and it does not extradite him or her (art. 42, para. 4).

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is regulated in articles 521-573 CPA and the Act on cooperation in criminal matters with Member States of the European Union (ACCMEU-1). The application of national law is subsidiary to the 11 bilateral and seven multilateral treaties Slovenia is party to. Slovenia can also apply the treaties in which it succeeded the former Yugoslavia, but in practice they are rarely used.

Since May 2012, extradition can be afforded in the absence of a treaty on the basis of reciprocity. Slovenia can use the Convention as a legal basis and has used it in at least two cases.

The instruments of the European Union, especially the Council Framework Decision on the European Arrest Warrant, take precedence over other international instruments. Within the European Union, extradition is simplified, inter alia, possible in the absence of dual criminality and for nationals, and with limited grounds for refusal.

Beyond the European Union, dual criminality is a requirement for extradition. Slovenia does not extradite its nationals except within the European Union. The principle *aut dedere aut judicare* is regulated in article 527, paragraph 4, CPA.

Slovenia has a mixed judicial-administrative procedure. After receiving the extradition request through diplomatic channels, the courts decide whether conditions for extradition are met. A negative court decision is automatically reviewed by a higher court, whereas a positive court decision is subject to appeal. Afterwards, the Minister of Justice decides whether there are grounds related to asylum, human rights or similar grounds for refusal; this decision can be appealed.

Extraditable offences are those which carry a sanction of one year or more (art. 522, para. 1, No. 4 CPA); all Convention offences are extraditable. Extradition for accessory offences is regulated in article 522, paragraph 2, CPA. Corruption is not considered a political offence; this is ensured in direct application of the Convention.

Simplified extradition is regulated by article 529 a CPA for cases in which the sought person agrees with the extradition, and is often used in practice. With regards to evidentiary requirements, there must be grounds for reasonable suspicion that the sought person has committed the offence.

Extradition detention is regulated in article 525 CPA, and provisional detention generally in article 201 CPA.

With regard to the transfer of sentenced persons, Slovenia is a party to five bilateral and four multilateral treaties, and applies a relevant European Union Council Framework Decision.

Transfer of criminal proceedings from Slovenia to another country is regulated in articles 519-520 CPA for cases regarding foreigners committing offences in Slovenia and Slovenians committing offences abroad. Otherwise, Slovenia can apply article 47 of the Convention directly.

Mutual legal assistance (art. 46)

Mutual legal assistance is regulated in articles 514-520 CPA, the ACCMEU-1 and the ZOPNI. The application of national law is subsidiary to the 21 bilateral and 10 multilateral treaties Slovenia is party to. Again, Slovenia can additionally apply the treaties in which it succeeded the former Yugoslavia, though it does so rarely in practice. Within the European Union, Council Framework Decisions, inter alia, on the execution of freezing orders and mutual recognition of confiscation orders, take precedence.

The central authority for mutual legal assistance is the Ministry of Justice. Although the law states that incoming requests should be received through diplomatic channels, the central authority receives them directly in practice. Slovenia can accept mutual legal assistance requests that have been transmitted through INTERPOL, in urgent cases. Requests can be submitted in Slovenian, English, French and in practice also in German.

All assistance measures can be provided that are not contrary to national legislation. Article 516 c CPA specifically regulates spontaneous exchange of information.

Slovenia provides mutual legal assistance in the absence of dual criminality.

The transfer of detained persons to and from Slovenia for a criminal procedure is regulated in articles 516 a) and b) and 517 a), b), c) and č) CPA. The use of videoconferencing is regulated in article 244 a CPA and is often applied in practice.

The specialty and confidentiality principles are not regulated in legislation but applied in practice.

The average duration of passive mutual legal assistance proceedings in Slovenia is 1-2 months.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Slovenia has concluded more than 25 law enforcement agreements with other countries sand can use the Convention as a legal basis for law enforcement cooperation. Institutional agreements and arrangements with counterparts abroad have been concluded by the Prosecution Office and the Police.

The Slovenian police cooperates with foreign police forces through Europol and INTERPOL. Slovenia cooperates through the Camden Assets Recovery Inter-Agency (CARIN) Network. Slovenian Customs cooperates on the basis of the Naples Convention and the World Customs Organization (WCO), and the Slovenian Financial Intelligence Unit is member of the EGMONT Group of Financial Intelligence Units.

Slovenia has a Liaison Office at Europol and a number of liaison officers, seconded officials and police attachés deployed to international peacekeeping missions. The Slovenian police is also actively involved in trainings of the European Police College CEPOL.

No specific regulations or measures exist for the provision of necessary items or quantities of substances or the fight against corruption committed through the use of modern technology.

Joint investigative teams are regulated in article 160 b CPA and, within the European Union, in articles 55-56 ACCMEU-1. Slovenia has taken part in two joint investigative teams in corruption cases. Both teams were established within the European Union, one of them with four other States.

With regard to special investigative techniques, Slovenia allows the obtaining of information related to electronic communications (art. 149 b CPA), secret surveillance (art. 149 a CPA), infiltration operations (art. 155 a CPA), control of electronic communications (art. 150 CPA), simulated provision of bribes (a 155 CPA), interference and surveillance (art. 151), obtaining information on bank transactions (art. 156 CPA), and controlled delivery (arts. 149 a and 159 CPA). These special investigative techniques refer to some but not all corruption offences. For the use at the international level, Slovenian law has relevant provisions in the ACCMEU-1 and in the Convention established by the Council in accordance with article 34 of the treaty of the European Union on Mutual assistance in Criminal matters between the Member States of the European Union, as well as in some of the above-mentioned bilateral police cooperation agreements. Slovenia can authorize the use of special investigative techniques at the international level on a case-by-case basis, on the basis of the Convention, and also without a treaty base, and evidence derived therefrom is admissible in court.

3.2. Successes and good practices

- Slovenia can use the Convention as a legal basis for international cooperation and has used it in at least two extradition cases (active and passive) and at least one mutual legal assistance case (arts. 44, para. 1, and 46, para. 1).
- Slovenian authorities have broad experience in in providing various types of mutual legal assistance, including tracing, freezing, seizure and confiscation of assets (art. 46, para. 3).
- The use of modern communication in international cooperation is regulated by the CPA, especially computer networks and electronic image and voice transmission devices (art. 46, para. 14).
- Slovenia makes efforts to expedite mutual legal assistance proceedings, and the average duration of mutual legal assistance proceedings is 1-2 months (art. 46, para. 24).
- Slovenia has provided many examples of law enforcement cooperation in money-laundering and other cases and is active in law enforcement cooperation (art. 48, para. 1).

3.3. Challenges in implementation

- Slovenia could also grant extradition in the absence of dual criminality to States parties that are not European Union Member States (art. 44, para. 2).
- It would be helpful to clarify the law in order to confirm that mutual legal assistance requests can be sent directly to the Ministry of Justice in its capacity as central authority (art. 46, para. 13).
- It is recommended that Slovenia take measures to enable its authorities to cooperate with foreign States to enhance the effectiveness of law enforcement in corruption cases by providing, where appropriate, necessary items or quantities of substances for analytical or investigative purposes (art. 48, para. 1 (c)).
- Slovenia is encouraged to strengthen its efforts in law enforcement cooperation to respond to offences covered by this Convention committed through the use of modern technology (art. 48, para. 3).
- It is recommended that Slovenia expand the scope of application of the special investigative techniques currently regulated in its legislation to all corruption offences (art. 50, para. 1).

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II. Executive summary

Tunisia

1. Introduction: Overview of the legal and institutional framework of Tunisia in the context of implementation of the United Nations Convention against Corruption

Tunisia signed the United Nations Convention against Corruption (the Convention) on 30 March 2004 and ratified it on 24 March 2008. Tunisia deposited its instrument of ratification with the Secretary-General on 23 September 2008.

Tunisia is a civil law country. The primary sources of law are the Constitution, the laws passed by Parliament and international law. The national legal framework to combat corruption includes provisions contained in several laws, including the Criminal Code, the Code of Criminal Procedure and Act No. 2003-75 of 10 December 2003 on supporting international efforts to combat terrorism and suppress money-laundering (the LBC Act).

Under article 20 of the new Constitution of 27 January 2014, the treaties approved by Parliament and ratified have a supra-legislative and infra-constitutional authority. The provisions of such treaties, including the provisions of the Convention, and with the exception of those that require the imposition of a penalty or coercive measure, are thus automatically applicable, without needing to be transposed into Tunisian law.

The main competent bodies in the fight against corruption are, alongside members of the national legal service and staff of the criminal investigation department, the National Authority for Combating Corruption (INLCC), the Judicial and Financial Unit at Tunis Court of First Instance and the Tunisian Financial Analysis Committee (CTAF) at the Central Bank. It should be noted that the new Constitution provides, at article 130, for the creation of a new good governance and anti-corruption authority.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Article 91 of the Criminal Code criminalizes the bribery of national public officials, but the provisions of this article do not explicitly cover the act of offering or acts committed directly or indirectly. This gap is filled by paragraph 2 of the same article, which punishes intermediaries. Article 91 does not explicitly criminalize promises or offers made by another person or entity.

The Criminal Code criminalizes the accepting or soliciting of bribes by national public officials (articles 83, 84, 85, 87 and 88).

Tunisian law does not provide for the criminalization of bribery concerning foreign public officials or officials of public international organizations.

Article 87 of the Criminal Code criminalizes trading in influence, but its provisions are limited to accepting remuneration, and do not cover soliciting or acts of promising, offering and giving.

Money-laundering, concealment (arts. 23 and 24)

Article 62 of the LBC Act criminalizes laundering the proceeds of crime in accordance with the provisions of the Convention. This article does not differentiate between money-laundering committed by the perpetrator of the predicate offence (laundering of own profits or "self-laundering") and that committed by a third party.

Any crime or offence could constitute an underlying offence and the provisions on money-laundering apply even if the underlying offence has been committed abroad.

The general provisions of the Criminal Code on participation (article 32), conspiracy (articles 131 and 132) and attempt (article 59) are applicable to the offence of laundering.

Tunisia has not submitted to the Secretary-General of the United Nations copies of its money-laundering legislation.

Concealment is also covered in article 32 of the Criminal Code as an act of aiding and abetting the commission of an offence.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

The provisions of articles 96, 99 and 100 of the Criminal Code criminalize the embezzlement of property by public officials. All types of property are covered, whether private or public.

Tunisia has criminalized various acts that might be considered as constituting an abuse of functions (articles 95 to 97 bis of the Criminal Code). In addition, it is considered an aggravating circumstance when a public official or person treated as such makes use of means or abilities inherent to his or her function in order to commit an offence (article 114 of the Criminal Code).

Although there is no provision to criminalize illicit enrichment under Tunisian law, a draft law is currently under consideration by the Government.

Tunisian legislation criminalizes various acts of embezzlement of property in the private sector such as misuse of corporate property, taking by fraud and breach of trust (articles 258, 263, 297 and 300 of the Criminal Code; article 223 of the Code of Commercial Companies).

Obstruction of justice (art. 25)

The provisions of article 244 of the Criminal Code cover in general terms the use of any means to obtain false testimony. However, Tunisian law does not criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage in order to interfere in the giving of testimony or to obtain or interfere in the production of evidence.

Article 116 of the Criminal Code criminalizes the use or threat of use of violence against a public official in order to force him or her to perform or refrain from performing an act within his or her functions.

Liability of legal persons (art. 26)

Concerning offences established in accordance with the Convention, Tunisia has established the criminal liability of legal persons for money-laundering only

(article 66 of the LBC Act). Such liability is without prejudice to the criminal liability of the natural persons who committed the offences.

Furthermore, the articles of the Code of Obligations and Contracts relating to civil liability also apply to legal persons (articles 82, 83 and 107).

Tunisian law provides appropriate sanctions against legal persons only with regard to money-laundering.

Participation and attempt (art. 27)

Article 32 of the Criminal Code criminalizes aiding and abetting and is applicable to offences established in accordance with the Convention.

The attempt to commit any offence for which the law provides a penalty of more than five years' imprisonment is punishable under article 59 of the Criminal Code. That article covers the offences of accepting or soliciting bribes by national public officials; embezzlement, misappropriation or other illegal use of property by public officials; certain breaches of trust; and money-laundering.

Preparatory acts for an offence are not criminalized.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

For corruption offences, Tunisia has adopted penalties ranging from 1 to 20 years of imprisonment, in addition to financial sanctions and ancillary penalties. Immunities do not constitute an impediment to the prosecution of such offences.

Tunisia applies the principle of discretionary prosecution. Articles 28, 30 and 36 of the Code of Criminal Procedure govern the exercise of that power.

Regarding procedures for release pending trial, article 86 of the Code of Criminal Procedure allows the investigating judge to issue a release order at any stage of the proceedings with or without bail, after consultation with the Public Prosecutor.

The Minister of Justice may, with the assent of the Parole Board, grant release on parole to a detainee who has served half or two thirds of his or her sentence (articles 353 to 360 of the Code of Criminal Procedure).

Under article 56 of the General Civil Service Regulations, a civil servant who commits an offence under ordinary law shall be immediately suspended from his or her duties. The case must be referred without delay to the Public Prosecutor's Office, particularly in cases of corruption, misappropriation of public funds, forgery or breach of professional confidentiality.

Removal from public office is an additional penalty which the Court is obliged to impose in cases of accepting or soliciting bribes and which it may optionally impose in cases of abuses of power, misappropriation of public funds and money-laundering. Those provisions also apply to companies in which the State holds more than a 50 per cent stake.

Disciplinary measures ranging from a warning right up to dismissal without suspension of retirement pension rights may be applied in addition to criminal sanctions (article 51 of the General Civil Service Regulations).

Tunisia has adopted a set of measures to promote the reintegration of convicted offenders into society.

Article 93 of the Criminal Code provides for exemption from punishment of a briber or intermediary who, prior to any proceedings, voluntarily reveals the corruption offence and, at the same time, provides evidence thereof. However, this article applies only to corruption offences in the strict sense and not to the other offences mentioned by the Convention (money-laundering, concealment, embezzlement, abuse of functions, obstruction of justice). Similarly, Tunisia does not have measures to encourage persons who participate or who have participated in the commission of an offence to cooperate with the authorities in order to deprive the perpetrators of the offence of the proceeds of the offence and to recover those proceeds.

Tunisia does not grant immunity from prosecution and does not provide for the reduction of sentences for a person who cooperates with an investigation or with the prosecution of offences.

Tunisian law does not provide protection for persons who cooperate with law enforcement authorities.

Protection of witnesses and reporting persons (arts. 32 and 33)

Tunisian law does not provide an integrated system to ensure protection from potential retaliation or intimidation for victims, witnesses, or experts who give testimony, or for their relatives or other persons close to them. However, there is provision in certain legislative instruments for specific protection measures.

The use of appropriate visual or auditory means of communication to hear witnesses and experts is only provided for in trials concerning terrorism.

Tunisia does not have appropriate measures to ensure protection against unjustified treatment for any person who reports corruption offences to the authorities.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Any proceeds of an offence must be confiscated, including property that substitutes for the proceeds, as well as profits and other benefits derived from the proceeds of the offence or from property the value of which corresponds to that of such proceeds (articles 5, 28, 29, 94 and 98 of the Criminal Code, article 67 of the LBC Act).

Confiscation also applies to property, equipment or other instrumentalities used in or destined for use in offences.

Tunisian law confers broad powers of investigation on the investigating judge, the INLCC and the CTAF to identify, locate, freeze or seize the proceeds and instrumentalities of the offence. Bank secrecy is not enforceable against those authorities.

Seized property is administered in accordance with the provisions of articles 97 to 100 of the Code of Criminal Procedure, while confiscated property is allocated to the State (article 28 of the Criminal Code). Property that has been confiscated and returned to the State is managed by the Confiscated Property Management Committee established by Decree Law No. 2011-68 of 14 July 2011.

Tunisian law does not allow reversal of the burden of proof as it contravenes the principle of the presumption of innocence (article 27 of the Constitution).

Statute of limitations; criminal record (arts. 29 and 41)

The statute of limitations period in which to commence criminal proceedings depends on the classification of the offence. This period is ten years for crimes, three years for misdemeanours and one year for petty offences (articles 3, 4 and 5 of the Code of Criminal Procedure). All offences criminalized under the Convention are classified as crimes or misdemeanours.

Although Tunisian law does not expressly provide for the suspension of the statute of limitations in cases where the offender has evaded the administration of justice, article 6 of the Code of Criminal Procedure provides that the statute of limitations be interrupted by any investigative measure or any step in criminal proceedings, even with regard to individuals who are not involved in such measure or step.

Legislation does not provide for the possibility of taking into account previous convictions in another State of an alleged offender.

Jurisdiction (art. 42)

Tunisia has established its jurisdiction over cases referred to in article 42, with the exception of corruption offences committed against the country, corruption offences committed abroad by a stateless person who has his or her habitual residence in its territory, and where participation in a money-laundering offence is committed outside its territory with a view to committing that offence in its territory.

The *aut dedere aut judicare* principle is not codified in Tunisia.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Contracts of which the cause is unlawful (contrary to morality, public policy or the law) are considered null and void.

In addition, several legal provisions allow corruption to be considered a relevant factor in legal proceedings to annul or rescind a contract or withdraw a concession (inter alia article 98 of the Criminal Code, article 200 of the Code of Commercial Companies, articles 62, 67 and 539 of the Code of Obligations and Contracts, as well as other articles of decrees relating to public procurement).

The Code of Criminal Procedure, in particular articles 1 and 7, allows any person who is the victim of a crime, including of acts of corruption, to file a civil action in criminal proceedings to request compensation for damage suffered.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Tunisia has several bodies competent in combating corruption.

Alongside members of the national legal service and staff of the criminal investigation department, Tunisia very recently established the INLCC as an independent body with powers to inquire into and investigate cases of corruption.

The institutional framework has been strengthened through the establishment of a judicial and financial unit at Tunis Court of First Instance to prosecute and

investigate complex and multiple-branched cases of corruption. The CTAF exists within the Central Bank and plays an important role in combating money-laundering and corruption.

In the view of the Tunisian authorities, those various bodies receive adequate training and resources, and are sufficiently independent.

Tunisia has legal provisions available that ensure effective cooperation between national authorities, inter alia the provisions of article 29 of the Code of Criminal Procedure, which requires all public officials to report to the Public Prosecutor offences that have come to their attention in the line of duty, as well as articles 11 and 34 of Decree-Law No. 120 of 14 November 2011 on anti-corruption, and article 81 of the LBC Act.

With regard to the cooperation of the private sector, article 35 of Decree-Law No. 120 provides for a general obligation on any person to report cases of corruption of which he or she has become aware to the President of the INLCC. Similarly, article 85 of the LBC Act provides for an obligation on banking financial institutions as well as other private sector institutions to submit a statement to the CTAF on any suspicious transactions that might be linked to the proceeds of unlawful acts.

Tunisia has also established a web portal for anonymous reports of corruption.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- The establishment of a web portal for anonymous reports of corruption (article 39, paragraph 2);
- Cooperation between the public sector, private sector and civil society in the fight against corruption appears to be active and inclusive (article 39, paragraph 2).

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Adopt legislative measures to ensure that the offence of bribery of national public officials covers cases of promises or gifts for another person or entity. It would also be useful to explicitly include in the definition acts of offering and acts committed directly or indirectly (article 15, paragraph a);
- Criminalize the bribery of foreign public officials and officials of public international organizations (article 16, paragraph 1);
- Consider criminalizing the solicitation or acceptance of bribes by foreign public officials and officials of public international organizations (article 16, paragraph 2);
- As regards trading in influence, Tunisia is encouraged to consider revising the wording of article 87 of the Criminal Code to extend the scope of criminalization to solicitation as well as acts of promising, offering and giving (article 18);

- Submit to the Secretary-General of the United Nations a copy of the legislation on money-laundering (article 23, paragraph 2 (d));
- Tunisia is encouraged to accelerate the process of adopting legislation to criminalize illicit enrichment in accordance with the provisions of the Convention (article 20);
- Criminalize the use of physical force, threats or intimidation and the promise, offering or giving of an undue advantage in order to interfere in the giving of testimony or to obtain or interfere in the production of evidence (article 25, paragraph a);
- Tunisia is encouraged to broaden the criminal liability of legal persons (article 26, paragraph 1);
- Provide effective, proportionate and dissuasive sanctions applicable to legal persons involved in offences established in accordance with the Convention (with the exception of money-laundering) (article 26, paragraph 4);
- Adopt adequate measures to better regulate the administration of frozen, seized or confiscated assets (article 31, paragraph 3);
- With regard to the protection of witnesses and reporting persons (articles 32, 33 and 37, paragraph 4):
  - Adopt the necessary measures to ensure effective protection from potential retaliation or intimidation for witnesses and experts and, where appropriate, for their relatives and other persons close to them. Such measures must also apply to victims insofar as they are witnesses and to accused persons who assist in investigation or prosecution;
  - Consider adopting the necessary measures to ensure protection against unjustified treatment of any person who reports corruption offences;
- Take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with the Convention to supply information useful to competent authorities for investigative and evidentiary purposes (with the exception of corruption offences in the strict sense), and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds (article 37, paragraph 1);
- Consider the possibility of mitigating punishment of an accused person who substantially cooperates with the investigation or prosecution (article 37, paragraph 2);
- Consider providing for the possibility of granting immunity from prosecution to a person who substantially cooperates with the investigation or prosecution (article 37, paragraph 3);
- Tunisia is encouraged to codify the *aut dedere aut judicare* principle (article 42, paragraph 4).

2.4. Technical assistance needs identified to improve implementation of the Convention

- Good practices/lessons learned with regard to articles 15, 16, 18, 20, 21, 22, 25, 26, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41 and 42;
- Model legislation with regard to articles 16, 18, 20, 21, 22, 25, 26, 30, 32, 33, 36, 37, 39 and 41;
- Drafting of an action plan for implementing the Convention with regard to articles 15, 16, 18, 20, 21, 22, 25, 26, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41 and 42;
- Legal advice with regard to articles 20, 21, 22, 25, 26, 30, 31, 33, 36, 37, 38, 39, 40, 41 and 42;
- On-site assistance by an anti-corruption expert with regard to articles 15, 16, 18, 20, 21, 22, 25, 26, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41 and 42;
- Capacity-building assistance for national authorities with regard to articles 20, 22, 26, 30, 31, 32, 33, 37, 40 and 42;
- Model agreement or arrangement with regard to articles 32 and 37;
- With regard to article 21, develop a sociological field study to identify the magnitude of the phenomenon and the sectors concerned;
- With regard to article 30, organize special training for civil society in order to provide it with the necessary means to fulfil its role in the rehabilitation of individuals convicted of crimes of corruption;
- With regard to article 36, organize training for supervisors of bodies specializing in the fight against corruption with a view to training them in assessing their independence and the training of their human resources.

3. Chapter IV: International cooperation

Tunisia has undertaken procedures relating to mutual legal assistance and extradition requests in corruption cases, but it is difficult to assess international cooperation practices in detail due to the lack of relevant data and statistics.

3.1. Observations on the implementation of the articles under review

Extradition (art. 44)

Unless otherwise provided for in treaties, extradition is governed by the provisions of Chapter VIII of Book IV of the Code of Criminal Procedure (articles 308-330).

The extradition procedure involves both a judicial and an administrative procedure. Extradition requests must be sent to the government through diplomatic channels. After verification of documents, the request is transmitted through the Ministry of Foreign Affairs to the Ministry of Justice, which checks the legality of the application. When the Secretary of State for Justice considers that it is appropriate to cooperate with the extradition request, he or she transmits the request to the Advocate-General, who immediately takes the steps necessary to make the arrest.

The consideration of extradition requests falls within the competence of the Indictment Chamber of Tunis Court of Appeal. The foreign national appears before the Chamber within 15 days following service of the arrest warrant.

If, during his or her appearance, the foreign national consents to being handed over, that declaration is noted on the record and it is the responsibility of the Ministry of Justice to take a decision that it deems appropriate.

Otherwise, the Indictment Chamber, whose ruling is not subject to appeal, shall give its reasoned opinion on the extradition request. If it concludes that the legal conditions are not met, or that a manifest error has been made, it issues an unfavourable ruling. This verdict is final and extradition may not be granted.

Where the ruling is in favour, the Government is free to grant extradition or not. If extradition is decided upon, the Secretary of State for Justice proposes a decree permitting extradition for the signature of the President of the Republic.

In urgent cases and at the direct request of the judicial authorities of the requesting State, the public prosecutors may, simply on the basis of notice conveyed by any means capable of producing a written record, order the provisional arrest of the foreign national.

In principle, Tunisian law does not allow extradition if the requirement of dual criminality is not met (article 311 of the Code of Criminal Procedure). However, some treaties contain exceptions.

The offence giving rise to the request must be liable under Tunisian law to criminal or correctional punishment (all offences criminalized under the Convention are liable to such punishment) and under the law of the requesting State, to imprisonment for a period of six months or longer for the totality of the offences for which the request has been made. In the case of conviction, the penalty imposed by the court of the requesting State must be imprisonment for a period of two months or longer (article 311 of the Code of Criminal Procedure).

While Tunisia does not make extradition conditional on the existence of a treaty, it sees the Convention as a legal basis for extradition. Anyone committing an offence established in accordance with the Convention, even in the absence of dual criminality, may be extradited, by direct application of the provisions of the Convention (article 20 of the Constitution and article 308 of the Code of Criminal Procedure). Tunisian law does not regard any of those offences as political offences.

Tunisia shall detain any person present in its territory whose extradition is requested (article 318 of the Code of Criminal Procedure).

Tunisia does not extradite its nationals (article 25 of the Constitution and article 312 of the Code of Criminal Procedure) and there are no exceptions to that rule that could allow even the conditional extradition of a national. The *aut dedere aut judicare* principle is recognized, but not codified.

The implementation of foreign criminal convictions may exceptionally be considered where there is a treaty regulating the matter.

Although the ruling of the Indictment Chamber is final and not subject to appeal, fair trial guarantees are provided for in the Constitution (article 27) and the Code of Criminal Procedure and apply in extradition proceedings.

The Constitution of 2014 contains several articles that prohibit any form of discrimination (inter alia articles 27, 29, 30, 46, 49), although those provisions are of a general nature.

Tunisian law and the bilateral treaties to which Tunisia is a party do not provide for the possible refusal of extradition on the sole ground that the offence is considered to also involve fiscal matters.

Tunisia has concluded numerous bilateral treaties on extradition and is a party to several multilateral treaties on the matter.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45 and 47)

Tunisia has not entered into any bilateral or multilateral agreements on the transfer of sentenced persons.

Tunisia does not have legislation on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Tunisia has no detailed legislation governing the issue of mutual legal assistance. This issue is governed by the general provisions of Chapter IV of Book IV of the Code of Criminal Procedure (articles 331-335), as well as the provisions of relevant multilateral or bilateral treaties to which Tunisia is a party.

Tunisia has designated the Ministry of Justice (Criminal Affairs Directorate) as its central authority. The acceptable languages are Arabic and French.

Requests for legal assistance are received through diplomatic channels. After verification of documents, the request is transmitted through the Minister of Foreign Affairs to the Minister of Justice who transfers it to the competent judge for implementation.

In urgent cases, requests may be communicated directly between judicial authorities, by any means capable of producing a written record, provided that the requests are transmitted subsequently through diplomatic channels. In urgent cases, requests may also be sent via INTERPOL.

Tunisia may provide mutual assistance, regardless of the existence of a treaty and in the absence of dual criminality. Moreover, all proceedings that can be conducted in a domestic criminal case may also be conducted on the basis of a request for mutual legal assistance.

With the exception of money-laundering, Tunisia cannot provide mutual legal assistance concerning the offences covered by the Convention for which a legal person may be held liable.

Domestic law does not contain specific provisions on deadlines for executing requests, or for monitoring the status and progress thereof on behalf of the requesting State.

While the Tunisian authorities may provide information voluntarily without prior request, this practice is not regulated.

There are no domestic laws on either the confidentiality of information and evidence transmitted in the course of a request for mutual legal assistance, or on

restrictions on their use. However, some bilateral legal agreements include provisions on the matter.

Although there are no rules governing hearings via videoconference, Tunisia has previously entered into bilateral arrangements through which it responded to requests for legal assistance sent using video links.

Bank secrecy and the fact that a request for mutual legal assistance involves fiscal matters are not recognized as grounds for refusal.

The transfer of detainees or persons serving a sentence is possible under article 335 of the Code of Criminal Procedure. Such transfers are mainly regulated either by the provisions of the Convention through its direct application or by the provisions of bilateral treaties.

Tunisia has concluded numerous bilateral and multilateral treaties on mutual legal assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

There are numerous channels of direct communication between Tunisian law enforcement authorities and their foreign counterparts, including through Tunis INTERPOL and the CTAF.

Standard communication channels are used in addition to secure channels like INTERPOL's I-24/7 data exchange system and the Egmont system.

Tunisia has concluded numerous treaties on direct cooperation between law enforcement agencies, and it likewise considers the Convention as the basis for such cooperation. In addition, the CTAF has signed numerous memorandums of understanding with its counterparts.

Tunisia has appointed national focal points but has not been involved in an exchange of personnel or other experts.

Tunisia has no legislation, arrangements or agreements that govern joint investigations.

Tunisia has no legislation relating to the use of special investigative techniques. A draft law is under preparation.

3.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:

- Tunisia may provide mutual legal assistance in the absence of dual criminality.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Consider adapting the information system to allow it to collect data and provide more nuanced and detailed statistics on requests for international cooperation relating to corruption offences;

- Tunisia is encouraged to codify practice by explicitly prohibiting extradition sought for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinion (article 44, paragraph 15);
- Consider adopting specific legislation which regulates mutual legal assistance in detail (article 46);
- Take the necessary measures to enable Tunisia to provide mutual legal assistance with respect to the offences covered by the Convention (except money-laundering) for which a legal person may be held liable (article 46, paragraph 2);
- Tunisia is encouraged to regulate the voluntary communication of information (article 46, paragraph 4);
- Regulate the issue of confidentiality of information and evidence transmitted during the course of a request for mutual legal assistance as well as restrictions on the use thereof (article 46, paragraphs 5, 19 and 20);
- Tunisia is encouraged to regulate hearings via videoconference (article 46, paragraph 18);
- Adopt the necessary measures relating to deadlines for executing the request for mutual legal assistance, and to monitoring the status and progress thereof on behalf of the requesting State (article 46, paragraph 24);
- Consider adopting legislation on the transfer of criminal proceedings (article 47);
- Tunisia is encouraged to strengthen law enforcement cooperation, including through the exchange of personnel (article 48, paragraph 1 (e));
- Consider entering into agreements or arrangements whereby the competent authorities concerned may establish joint investigative bodies (article 49);
- Regulate the use of special investigative techniques (article 50).

3.4. Technical assistance needs identified to improve implementation of the Convention

- Good practices/lessons learned with regard to articles 44, 45, 46, 47, 48, 49 and 50;
- Development of an action plan for implementing the Convention in relation to articles 44, 45, 46, 47, 48, 49 and 50;
- On-site assistance by an anti-corruption expert with regard to articles 44, 45, 46, 47, 48, 49 and 50;
- Capacity-building assistance for national authorities regarding articles 44, 45, 46, 47, 48, 49 and 50;
- Model treaties for articles 45 and 46;
- Model agreements or arrangements for articles 46, 48, 49 and 50.

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Executive summary

Note by the Secretariat

Addendum

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II. Executive summary

Qatar

1. Introduction: Overview of the legal and institutional framework of Qatar in the context of implementation of the United Nations Convention against Corruption

Qatar signed the Convention on 1 December 2005 and ratified it by Decree 17 of 2007 on 30 January 2007. The Convention entered into force for Qatar on 1 March 2007.

The relationship between national and international law is dualistic in the Qatari legal system, and treaties including the Convention are not self-executing and have to be implemented into Qatari legislation (art. 6 of the Constitution).

Qatar is a hereditary constitutional monarchy. With the Constitution of 2003, Qatar adopted the principle of separation of powers (art. 60). The legislative authority is vested in the Shura Council in accordance with the Constitution, and the Executive power is vested in the Emir, assisted by the Council of Ministers. Courts are divided into criminal and civil courts, at two levels. A Supreme Council supervises the proper functioning of courts of law and their auxiliary organs. The judicial system also includes the Constitutional Court.

The institutions most relevant in the fight against corruption are the Public Prosecution office, which has a dedicated department handling corruption and money-laundering cases, the Administrative Control and Transparency Authority and Qatar Financial Information Unit (FIU).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Qatar criminalizes active bribery of national public officials pursuant to article 141 read in conjunction with article 140 of the Penal Code (PC), provided that the offer or the promise is accepted. The same penalty applies to the intermediary.

Article 145 PC applies if the bribe offer is declined. However, this article does not explicitly cover the "promise".

Qatar criminalizes passive bribery of national public officials (art. 140 PC). Articles 142, 143 and 144 are also relevant.

Qatar does not criminalize active or passive bribery of foreign public officials and officials of public international organizations.

Article 154 PC criminalizes passive trading in influence by limited categories of public officials and does not cover "any other person".

Active trading in influence, when the offence of article 154 is committed, could be prosecuted pursuant to article 40 on participation.

Qatar criminalizes passive bribery in the private sector (art. 146 PC). Active bribery in the private sector, when the offence of article 146 is committed, could be prosecuted pursuant to article 40 on participation.

Money-laundering, concealment (arts. 23 and 24)

Article 72 read in conjunction with article 1 of Law No. 4 of 2010, promulgating the Law of Combating Money-Laundering and Terrorism Financing (AML Law) criminalizes the laundering of proceeds of crime.

Qatar criminalizes the attempt to commit a money-laundering offence (art. 72 AML Law). Other ancillary offences are adequately covered (art. 2 AML Law and the general provisions of the PC (Participation: art. 40; Conspiracy, abetting, facilitating and counselling: art. 39; Aiding: art. 38)).

In determining predicate offences, Qatar has adopted a mixed approach. According to article 2 of the AML Law, predicate offences include all felonies, all offences covered under the international conventions signed and ratified by Qatar, in addition to a list of offences. Predicate offences include offences committed both within and outside Qatar provided that dual criminality is met.

Article 2 of the AML Law explicitly criminalizes self-laundering.

Concealment of proceeds of crime is established as a separate offence (article 367 PC).

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 149 PC covers embezzlement, misappropriation or other diversion of property by a public official when such property is owned by the State or a number of other authorities.

Embezzlement of other properties (i.e. private funds or securities) is criminalized (art. 148 PC); however, this article does not explicitly cover "misappropriation or other diversion".

Qatar criminalizes the abuse of functions in the public sector (art. 160 PC). With respect to money-laundering, the abuse of functions in the private sector is an aggravating circumstance (art. 72 AML Law).

Qatar does not criminalize illicit enrichment.

Qatar criminalizes embezzlement of property in the private sector (art. 362 PC). However, this article only covers "property, bonds or other movable properties" and does not extend to immovable properties. Embezzlement of such properties might be criminalized pursuant to the general provisions of article 355 on fraud.

Obstruction of justice (art. 25)

The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony is criminalized (art. 175 PC), even if the intended purpose is not achieved. Whoever testifies in front of a court is considered a witness, including experts.

Qatar does not criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to interfere in the production of evidence. However, articles 183 and 184 of the PC on "evidence manipulation" in conjunction with article 39, paragraph 1 on incitement could apply to cases of the

promise, offering or giving of an undue advantage to interfere in the production of evidence in proceedings when the intended purpose is achieved.

Article 168 PC criminalizes the use of force, violence or threat to interfere with the exercise of official duties by a public official.

Liability of legal persons (art. 26)

Qatar establishes the criminal liability of legal persons (art. 37 PC). Such liability does not preclude the criminal liability of the natural persons who have committed the offences.

Civil liability of legal persons is also recognized in the Civil Code (arts. 54, 199 and 209).

Legal persons which are held criminally liable might be subject to a maximum fine of five hundred thousand Qatari Riyals (around 137,000 USD). In money-laundering cases, such fine cannot be less than five million Qatari Riyals (art. 75 of the AML Law).

Participation and attempt (art. 27)

The PC regulates participation (arts. 38, 39 and 40) and attempt (arts. 28-31).

While the attempt of any felony is criminalized, attempted misdemeanours are only criminalized if explicitly foreseen by the law. This leaves the attempt to commit some offences established in accordance with the Convention not criminalized (art. 146 PC: bribery in the private sector; art. 160 PC: abuse of functions; art. 362 PC: embezzlement in the private sector; art. 175 PC: induction of false testimony or interference in the giving of testimony).

Qatar does not criminalize the preparation of an offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

Qatar has adopted penalties for offences established in accordance with the Convention that range from a fine up to ten years' imprisonment, taking into account the gravity of the offence, in addition to accessory or complementary penalties.

Immunities do not seem to constitute an impediment to the prosecution of such offences. Only members of the Shura Council benefit from immunity, except for when they are caught in the commission of an offence (art. 113 of the Constitution). During the sessions of the Council, the authorization of the Council is required, and in intercessional periods, the authorization of the president of the Council to lift immunities.

Qatar does not have a system of mandatory prosecution. There is no general law regulating how this discretionary authority should be exercised. The most relevant factor that is taken into account is, among others, the gravity of the offence. In the event the prosecutor refuses to move forward with prosecution, there is recourse to the Attorney General, and then to the court.

Preventive detention can be applied for offences established in accordance with the Convention. Release pending trial is possible with or without bail (arts. 119 and 120 of the Criminal Procedure Code (CPC)).

Early release is possible if three quarters of the prison sentence have been completed and if all financial obligations have been settled. The conditional release is ordered by the Public Prosecutor upon request of the Minister of Interior or his representative (art. 360 CPC and art. 67 of Law on the Regulation of Penal and Correctional Institutions).

Public officials can be suspended for not longer than 30 days if the interests of the investigation require such measures. In addition, public officials are considered suspended if they are in preventive detention (arts. 134 and 135 of the Law on Human Resources Management).

The PC provides for the sanction of removal/disqualification from holding public office and office in an enterprise owned in whole or in part by the State (mainly arts. 66, 70, 147 and 158).

Disciplinary sanctions can be issued under the Law on Human Resources Management (arts. 122-155). Both disciplinary and criminal sanctions can be imposed in corruption cases.

The Law on the Regulation of Penal and Correctional Institutions contains dedicated measures to facilitate the social reintegration of prisoners. Moreover, pursuant to the CPC, the convicted person may ask for his/her rehabilitation after a period following serving the sentence.

Cooperation with law enforcement authorities may be taken into account in bribery and money-laundering cases, where persons collaborating with justice can benefit from an exemption from punishment if they report the offence before it comes to the knowledge of the authorities (arts. 141 and 144 PC, art. 83 AML Law). For all other offences, the general provisions of article 46 of the PC apply. If the authorities are notified after they have begun their investigation, exemption from punishment becomes conditional on the arrest of the conspirators.

For offences that may cause damage to national economy and public benefits, the Public Prosecutor can settle the case prior to referral to the Court (art. 18 CPC).

Qatar has not established measures to protect persons cooperating with justice.

Protection of witnesses and reporting persons (arts. 32 and 33)

Qatar has not established measures to protect witnesses, victims, persons providing information in the case and persons close to them. The Qatari legislation does not enable the views and concerns of victims, regarding their safety, to be presented and considered during criminal proceedings.

Qatar has not established the legal protection of reporting persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 76 of the PC regulates the confiscation, upon conviction of a crime or misdemeanour, of proceeds of crime and instrumentalities used or destined for use in the commission of offences. Article 77 of the AML Law is also applicable to

confiscation regarding money-laundering and predicate offences, including corruption offences. This article provides for value-based confiscation and for the confiscation of transformed, converted and intermingled criminal proceeds, in addition to income or other benefits derived from such proceeds.

In money-laundering cases, article 77 of the AML Law also provides for non-conviction based confiscation when the perpetrator is unknown or dead.

The CPC (arts. 63-81) and the AML Law (arts. 20 and 46-48) provide for a wide range of investigative measures for the identification, tracing, freezing or seizure of criminal proceeds and instrumentalities. Measures provided for in the AML Law also apply to predicate offences, including corruption offences.

Both the CPC (arts. 126 and 145) and the AML Law (arts. 51 and 79-81) contain measures to regulate frozen, seized and confiscated property, including the establishment of an Office at the Public Prosecution responsible for the administration of seized and confiscated assets.

Qatar has not established the inversion of the burden of proof regarding the lawful origin of alleged proceeds of crime.

Bank secrecy does not appear to be an obstacle to criminal investigations. Article 46 of the AML Law empowers the Attorney General to order that bank, financial and commercial records be made available in any money-laundering and predicate offences cases.

Statute of limitations; criminal record (arts. 29 and 41)

Article 14 of the CPC foresees a statute of limitations of ten years for crimes, three years for misdemeanours and one year for contraventions, starting from the date of the commission of the offence. For embezzlement in the public sector, the period starts from the end of service or capacity, unless investigations started before that date.

The statute of limitations for bribery in the private sector (art. 146 PC), abuse of functions (art. 160 CPC), embezzlement in the private sector (art. 362 PC), and induction of false testimony or interference in the giving of testimony (art. 175 PC) is three years. All other offences established in accordance with the Convention are felonies in Qatar and hence their statute of limitations is ten years.

Qatar has not adopted measures to take into consideration previous foreign convictions of alleged offenders for the purpose of using such information in criminal proceedings.

Jurisdiction (art. 42)

The PC establishes Qatar's jurisdiction with regard to most circumstances referred to in article 42 (territorial jurisdiction: arts. 13 and 14, active personal jurisdiction: art. 18, jurisdiction referred to in para. 1.c: art. 13), with the exception of corruption offences committed abroad by a stateless person who has his or her habitual residence in its territory and corruption offences committed against a Qatari citizen or against Qatar.

The principle *aut dedere aut judicare* is not regulated in Qatar by statutory law. It is recognized only when the alleged offender is Qatari. In that case, article 18 on active personal jurisdiction applies.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Qatar has taken measures to address the consequences of corruption, including the termination of procurement contracts tainted by corruption (Emir Decision No. 75 of 2011 on establishment of the Administrative Control and Transparency Authority).

Articles 199 to 207 of the Civil Code establish the civil liability for damages. In trials for criminal offences, civil compensation for damage caused by the accused can be solicited during the investigation or before the court hearing the criminal case (art. 19 CPC).

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Qatar has several specialized authorities to combat corruption through law enforcement. Alongside the police and the Public Prosecution, which has a dedicated department handling corruption and money-laundering cases, Qatar recently created the Administrative Control and Transparency Authority. This Authority, which is directly linked to the Emir, is invested with large powers to prevent and investigate corruption.

Qatar's FIU also plays an important role in the fight against money-laundering and corruption. These bodies appear to receive adequate training and resources, and are sufficiently independent.

Regarding cooperation between national authorities, the CPC (art. 33) and PC (art. 189) establish an obligation by public officials to report offences which come to their knowledge during the exercise of or because of their functions.

The AML Law establishes the obligation of a number of private sector entities, including banks, financial institutions, insurance companies, audit firms and lawyers, to report to the FIU any suspicious transactions and to provide it with any additional information which it may request (arts. 15 and 18). The FIU has been also engaged in raising awareness activities addressed to the private sector entities. The CPC (art. 32) and the PC (art. 186) establish a general obligation to report offences to the relevant authorities.

2.2. Successes and good practices

- With respect to money-laundering, the abuse of functions in the private sector is an aggravating circumstance pursuant to article 72 of the AML Law (art. 19);
- The absence of a statutory maximum fine for legal persons in money-laundering cases was considered to be conducive to deterrence and was positively noted by the reviewing team (art. 26, para. 4);
- The Public Prosecution has implemented a practice whereby criminal case files can be remotely tracked by supervisors to monitor progress (art. 36).

2.3. Challenges in implementation

It is recommended that Qatar:

- Criminalize the promise of a bribe to a national public official, even when such promise is declined (art. 15, para. 1);
- Criminalize the active bribery of foreign public officials and officials of public international organizations (art. 16, para. 1) and consider establishing the passive version of the offence (art. 16, para. 2);
- With regard to trading in influence, consider reviewing its legislation to include all public official and other persons (art. 18);
- Explicitly criminalize the misappropriation or other diversion by a public official of any property including private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position (art. 17);
- Consider criminalizing illicit enrichment (art. 20);
- Criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to interfere in the production of evidence in proceedings in relation to the commission of offences under the Convention against Corruption (art. 25 (a));
- Consider the possibility of requiring that an offender demonstrate the lawful origin of property liable to confiscation (art. 31, para. 8);
- Take appropriate measures to provide effective protection for witnesses and experts who give testimony concerning corruption offences and, as appropriate, for their relatives and other persons close to them. Such measures shall apply to victims insofar as they are witnesses and might include the use of communications technology (audio-visual) in hearings (art. 32, paras. 1, 2 and 4);
- Enable the views and concerns of victims to be presented and considered during criminal proceedings (art. 32, para. 5);
- Consider taking appropriate measures to provide effective protection against any unjustified treatment for reporting persons (art. 33);
- Take appropriate measures to provide effective protection for offenders who cooperate with justice concerning offences established in accordance with the Convention and, as appropriate, for their relatives and other persons close to them (art. 37, para. 4);
- Qatar may wish to adopt measures to take into consideration previous foreign convictions of alleged offenders for the purpose of using such information in criminal proceedings (art. 41);
- Qatar may wish to establish its jurisdiction with regard to corruption offences committed abroad by stateless persons who have their habitual residence in its territory and corruption offences committed against Qatari citizens or against Qatar (art. 42, paras. 2a, 2b and 2d);

- Generally with respect to criminalization and law enforcement, the reviewers encourage Qatar to develop appropriate systems to collect statistics of relevant cases.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Extradition is governed by the CPC and international treaties and conventions, namely the Riyadh Arab Agreement on Judicial Cooperation of 1983 and the principle of reciprocity. Dual criminality is generally a condition for extradition, and the law provides for a minimum penalty requirement: according to article 409, the crime for which extradition is requested must be a felony or misdemeanour punishable according to the Qatari laws and the laws of the requesting State by at least two years or a more aggravated penalty; or the person whose extradition is requested must be sentenced to imprisonment for a period of at least six months. The minimum penalty and dual criminality requirements can be waived if the person whose extradition is sought is a citizen of the requesting country, or a citizen of another country which implements the same penalty. Extradition is limited to the extent that Qatar has not criminalized all offences under the Convention.

Extradition is not allowed if the crimes for which extradition is sought are numerous, except for those crimes which satisfy the dual criminality and minimum punishment threshold. A Convention-based offence would not be treated as a political offence in case the Convention was used as a basis for extradition.

Qatar indicated that it considers this Convention as the legal basis for extradition in respect of corruption-related offences. With respect to States with which it does not have an extradition treaty, Qatar may elect to extradite in accordance with the provisions of its domestic legislation, upon a basis of reciprocity.

The CPC sets out the rules for extraditing accused persons and takes into account expediting and simplifying extradition procedures without infringing on the rights of accused or convicted persons requested to be extradited.

Qatar does not extradite its nationals to stand trial in other countries, nor does its law permit the enforcement of a foreign penal sentence under these circumstances. If Qatar refuses to extradite any of its citizens who has committed an offence within or outside the Qatari territory, the provisions of the Qatari Penal Code apply to such person, according to articles 16 and 18 PC.

The individual rights of persons wanted for extradition are protected both with respect to the procedural and substantive aspects of their extradition.

A requested person shall not be extradited if there are grounds to suspect, among others, that the request for extradition was submitted for reasons of discrimination against the wanted person on the basis of race, religion, nationality or political opinion, or if the crime for which extradition is requested is a political crime or connected to a political crime. Extradition requests will not be refused for criminal offences on the sole ground that the offence is also considered to involve fiscal matters. The grounds for refusal are mandatory, not permissive.

Qatar consults, as a matter of practice, with requesting States before refusing extradition.

The transfer of detained persons to Qatar is regulated in articles 434 to 439 of the CPC. The transfer of prisoners from Qatar to another State is regulated in articles 440 to 443 of the CPC. There are no agreements on prisoner transfer, which is handled on the basis of reciprocity.

There is no specific law or practice on the transfer of criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance (MLA) is regulated in Part 4 (arts. 427 to 433) of the CPC. The procedure for incoming and outgoing requests is regulated in articles 427 to 431 and 432 to 433, respectively. There are no restrictions regarding legal persons.

The existence of a treaty is not a prerequisite to provide MLA. Since 2003, Qatar has entered into four bilateral treaties, which contain MLA provisions: Saudi Arabia, Yemen, Turkey and Bahrain. MLA is mainly handled on the basis of the Riyadh Agreement. International conventions are the source of the legal rules applied by Qatar with respect to international cooperation, taking into account the rules of the CPC. The spontaneous transmission of information to competent authorities of other States is a part of informal law enforcement cooperation.

Dual criminality is not a requirement for MLA (art. 428 of the CPC). However, in accordance with article 428(3), assistance must be refused if the offence is not extraditable. The provision of non-coercive assistance is not addressed in the legislation, although Qatari authorities indicated that as a matter of practice assistance is rendered in simple or other cases that do not have coercive procedures without looking to whether the conditions for dual criminality are satisfied.

The Attorney General is the Central Authority for purposes of MLA (art. 427 of the CPC). It is expected that requests will be submitted in writing. In cases of urgency, and upon the request of the applicant country, necessary measures can be undertaken before arrival of the application, until it is received (art. 427 of the CPC). There are no internal deadlines regarding the processing of MLA requests.

Assistance will be performed in the manner requested so long as this does not violate Qatari law (arts. 427 and 430 of the CPC). Although Qatar preserves the confidentiality of MLA requests in practice, the matter is specified in its legislation only in relation to money-laundering offences. The hearing of testimony by way of videoconference is possible, so long as the request does not contravene Qatari law. Qatar's legislation does not address a limitation on the use of information obtained through MLA.

There are a number of grounds for refusing assistance. Assistance shall be refused if the crime for which the request is intended to be executed is one for which extradition is not allowed. Qatar would not refuse a request relating to an offence under the Convention simply because it involves fiscal elements. Although bank secrecy is not a ground for refusal under the CPC, the legislation only addresses the disclosure of information covered by bank secrecy for purposes of MLA in relation to money-laundering offences.

Assistance may be postponed if it would interfere with an ongoing domestic criminal proceeding in cases where the person sought is being investigated for another crime committed in Qatar. Qatar would communicate grounds for refusing assistance to requesting States as a matter of practice, although the matter is specified in its legislation only in respect of money-laundering offences. Qatar's legislation does not provide for a duty to consult *before* refusing or postponing assistance in relation to offences under the Convention.

The transfer of prisoners for providing testimony or evidence is possible in accordance with general provisions in the CPC (e.g., art. 427) and the AML Law (art. 58(2)); however, the consent of the person transferred is not required, and the custody of the prisoner, credit for service of the sentence and safe conduct are not addressed. Similarly, for witness transfers, the consent of the person transferred and safe conduct are not addressed.

The issue of costs of MLA is addressed in the CPC in respect of deposits for fees and charges of experts during the execution of MLA requests (art. 429).

Provisions on the disclosure of government records, documents or information are found in the AML Law.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Law enforcement cooperation with foreign authorities is implemented on the basis of bilateral and multilateral agreements, the INTERPOL network and on a case-by-case basis. Aside from the legal basis for MLA under the CPC and cooperation in respect of money-laundering offences under the AML Law, CPC, relevant agreements and the principle of reciprocity, no detailed domestic framework for the provision of law enforcement cooperation exists. This does not, however, appear to have prevented Qatar from providing such cooperation in practice. This Convention may be considered as the basis for mutual law enforcement cooperation.

Joint investigations are possible under existing legislation, international conventions or bilateral agreements. However, there have not been joint investigations in corruption matters.

Law enforcement authorities conduct special investigative techniques, including electronic and other forms of surveillance and covert operations. Relevant measures are found in the CPC (arts. 425 and 426). Article 65 of the AML Law allows the conduct of joint investigations on a case-by-case basis, in the absence of bilateral or multilateral arrangements.

3.3. Challenges in implementation

To further strengthen existing measures, it is recommended that Qatar:

- Ensure that all offences under the Convention are extraditable by virtue of the minimum period of imprisonment and the dual criminality principle (art. 44, para. 7).
- Include in its legislation ethnic origin among the grounds for refusing extradition on the basis of the discriminatory purpose of the request (art. 44, para. 15).

- Formalize its existing practice of consulting with requesting States before refusing extradition (art. 44, para. 17).
- Adopt measures to enable it to provide non-coercive assistance in the absence of dual criminality, and also in cases where assistance must be refused under article 428(3) CPC on the ground that the offences are not extraditable due to the minimum period of imprisonment (art. 46, para. 9).
- Adopt measures clearly providing that assistance will not be declined on the ground of bank secrecy in cases involving offences under the Convention (art. 46, para. 8).
- For purposes of prisoner transfers to provide testimony or evidence, adopt measures addressing the consent of the person transferred, custody of the prisoner, credit for service of the sentence, and safe conduct (art. 46, paras. 10-12).
- Specify the language requirements for MLA and whether MLA requests must be in writing (art. 46, para. 14).
- Make the requisite notifications of its central authority and acceptable languages for MLA to the United Nations (art. 46, paras. 13 and 14).
- In the interest of greater legal certainty, specify the content requirements for incoming MLA requests (art. 46, paras. 15 and 16).
- Adopt a relevant provision addressing the limitation on use of information obtained through MLA (art. 46, para. 19).
- Adopt a provision on the confidentiality of MLA requests in respect of all offences under the Convention (art. 46, para. 20).
- Specify in its legislation that reasons will be given for refusing MLA in relation to offences under the Convention apart from money-laundering (art. 46, para. 23).
- Continue to strengthen measures to ensure the expedited execution of MLA requests. Qatar may also wish to adopt guidelines specifying that updates will be provided on the status of execution of requests (art. 46, para. 24).
- Specify the duty to consult *before* refusing assistance in respect of all offences under the Convention (art. 46, para. 26).
- More clearly specify the issue of costs for MLA (art. 46, para. 28).
- Address the disclosure of government records, documents or information in cases involving offences under the Convention other than money-laundering (art. 46, para. 29).
- Qatar may wish to allow for extradition in cases involving crimes related to extraditable crimes (art. 44, para. 3).
- Qatar may wish to adopt measures providing that assistance may be postponed if it would interfere with ongoing domestic criminal proceedings also in cases where the person sought is not being investigated for other crimes committed in Qatar (art. 46, para. 25).

- In case of witness transfers (art. 46, para. 27), Qatar may wish to adopt measures providing for the consent of the person transferred and safe conduct.

- The reviewers welcome the efforts being made to establish a case management system in the Office of the Public Prosecution, which would allow the authorities to collect statistics on the type of international cooperation requests (e.g., underlying offences), the time frame for responding to these requests, and the response provided, including any grounds for refusal.